

to: **Consumer Product  
Manufacturers**

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### **“Industrial & Institutional Products” Definition Clarification**

At the request of industry, this advisory was undertaken to more clearly describe the so-called “industrial” products that are not regulated under the ARB consumer products regulation (Title 17, California Code of Regulations (CCR), sections 94507-94517).

The consumer products regulation applies not only to “household products” used by individual consumers around their homes. The regulation also applies to products that are commonly known as “institutional products” or “industrial and institutional (I&I) products.” Section 94508(a) of the consumer products regulation defines these terms as follows:

“Institutional Product” or “Industrial and Institutional (I&I) Product” means a consumer product that is designed for use in the maintenance or operation of an establishment that: (A) manufactures, transports, or sells goods or commodities, or provides services for profit; or (B) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. “Establishments” include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. “Institutional Product” does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

You will notice that the last sentence of this definition specifically excludes “... products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment ....” These types of products are commonly referred to as “industrial products.” The consumer products regulation does not apply to industrial products; they are exempt under the regulation. (There is one exception to this rule; industrial “aerosol adhesives,” as well as aerosol adhesives used by households and institutions, are regulated under the ARB consumer products regulation. This exception exists in order to implement legislation enacted by the California Legislature in 1996 (see California Health and Safety Code section 41712(h).)

Examples of industrial products that are exempt include such items as mold-release products, which aid in releasing newly-manufactured products from molds, and nonaerosol adhesives used in manufacturing goods or commodities. Also exempt are those industrial products that may not actually become a part of the finished good or commodity, but are nonetheless essential to the manufacturing process. Cleaning, degreasing, and lubricating products are three examples of such products. If the manufacturing process is the only purpose for these products, then they too are exempt under the consumer products regulation.

Examples of products that do fall under the definition of “institutional product” or “industrial and institutional (I&I) product,” and are thus subject to the consumer products regulation, include products used in the general cleaning or maintenance of a facility. Typical I&I products are often similar to commonly available household products, and are used to perform tasks (such as cleaning, waxing, etc.) that are similar to those performed by household consumers. Examples of such I&I products include air fresheners, floor cleaners, floor waxes, general purpose cleaners, and insecticides.

The ARB staff has received a number of questions about this area of the consumer products regulation. To help provide additional clarification, following are the ARB’s answers to some of these questions.

- Q:** Is the term “I&I” used the same way by both the ARB and the consumer products industry?
- A:** In general, yes. But there are some differences in the way that industry and ARB regulations use this term. The term “I&I” is generally used by industry to describe products used by businesses or institutions, as opposed to individual consumers. This usage is consistent with ARB’s definition. However, the ARB definition of I&I specifically excludes “products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.” These products may sometimes be referred to as “I&I” products by the consumer products industry, but are not considered I&I products under the ARB definition.
- Q:** Workers at our facility occasionally use a “high-VOC” industrial lubricant for purposes other than its intended use, such as lubricating door hinges at the facility. When the lubricant VOC limits go into effect in 2003, can enforcement action be taken against us for such incidental uses? (As used here, the term “high-VOC” means that the product does not meet the applicable VOC standard specified in the consumer products regulation.)
- A:** The consumer products regulation applies to selling, supplying, offering for sale, or manufacturing consumer products for use in California. The regulation does not apply to, or impose any restrictions on, the act of “using” or “applying” a product (except for aerosol adhesives, as explained below). Therefore, no enforcement action under the consumer products regulation would be taken against a person who is using or applying an

industrial lubricant for some incidental use at the facility, even if the product is not designed or intended for such use.

There is an exception to this general rule; as a result of 1996 legislation, the consumer products regulation does prohibit the use of aerosol adhesives that do not comply with the ARB's 75 percent VOC standard for this category (see Title 17, CCR, section 94509(i)). You should also be aware that the general rule in the consumer products regulation is different from the ARB aerosol coatings regulation, which does impose restrictions on all commercial application of noncomplying aerosol coatings: see Title 17, CCR, sections 94520, 94522(a)(1), and 94523(d). (The aerosol coatings regulation also regulates all aerosol coatings, including "industrial" aerosol coatings used exclusively in the manufacture or construction of goods or commodities.)

- Q:** Our manufacturing facility wishes to use a high-VOC, noncomplying glass cleaner to clean our finished product as it comes off the assembly line. Would a glass cleaner used for this purpose be considered an "industrial" product and thus be exempt from the consumer products regulation?
- A:** Yes, if the high-VOC product is designed to be used exclusively to clean finished products manufactured at the site of an establishment. Under the I&I definition in the consumer products regulation, such products are exempt from regulation (i.e., they are considered "industrial" products) even though they are not "actually incorporated into" the manufactured goods or commodities.
- Q:** Our facility wishes to purchase a high-VOC product from a national distributor of I&I products. The product does not comply with the VOC limits specified in the ARB consumer products regulation, but it is a complying product in most other states. Could enforcement action be taken against us if we purchase such a product, but use it exclusively as an industrial product?
- A:** The answer to this question is rather tricky. We will try to answer the question as simply-but as completely--as possible. As mentioned above, the consumer products regulation does not apply to or prohibit the act of "using" a noncomplying product (except for aerosol adhesives, as explained previously). The regulation also does not apply to or prohibit the act of "purchasing" a noncomplying product. So it would not be a violation of the consumer products regulation for a company to merely use or purchase a noncomplying product for use in an industrial application (or even for use in a nonindustrial application).

However, the regulation does prohibit "selling, supplying, or offering for sale" a noncomplying consumer product for use in California. So, depending on the circumstances in a particular case, the person or company who sold the product to the facility may have violated a regulatory prohibition. We will now try to explain what we

mean by “depending on the circumstances.” If a high-VOC product is designed, marketed, and distributed exclusively as an industrial product, then there would be no violation for selling that product in California. Such a product would not really be a “noncomplying product” at all, since the product would be exempt from the consumer products regulation. But if a high-VOC product is designed and marketed for use in both an industrial setting and by ordinary consumers or institutions, then it is illegal to sell this product in California. Such a sale would be illegal even though a particular sale may have been made to a company that intends to use the product in an industrial setting. In our view, if a product otherwise meets the definition of a “consumer product” under the regulation, it does not cease to be subject to the regulation simply because a particular sale happens to be to a manufacturing facility instead of an individual consumer.

We would like to mention one final caveat. The answer to the question above addresses only the requirements of the ARB consumer products regulation. There may well be situations in which a company that uses a high-VOC product would be in violation of other laws or regulations, even though the company would not be in violation of the ARB consumer products regulation. For example, the company may be operating under a local air district permit (or other government permit) which restricts the company’s use of certain kinds of high-VOC products. Or there may be a local air district rule which applies to the facility and requires the use of low-VOC products. Or a company that purchased or used noncomplying products in order to gain a competitive advantage might run afoul of state unfair competition laws. These are only examples; all of the circumstances of a particular situation would have to be evaluated before one can definitively state whether a company could legally use a particular product in a particular way.

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